December 2023

BUSINESS LAW UPDATE

In This Issue:

BUSINESS PERSPECTIVES

Corporate Transparency Act Takes Effect January 1
By Frank D. Chaiken, Practice Group Leader, Corporate Transactions & Securities

If you have been paying attention to the news and your email inbox, no doubt you have received urgent warnings of an impending sea change in the rules of doing business in the United States: the Corporate Transparency Act (CTA).

We reported on this in the March 2023 edition of the *Business Law Update* ("Corporate Transparency Act Requires Filing Reports with FinCEN in 2024"). The effective date is now upon us. Business entities in the United States must begin registering their beneficial ownership and control information with the Financial Crimes Enforcement Network (FinCEN) starting January 1, 2024.

Part of federal anti-money laundering legislation enacted in 2021, the CTA represents a fundamental change in the role and use of business entities in this country and reflects similar changes in countries across the globe.

Much of this activity stems from the revelations coming out of scandals such as the release of the so-called Panama Papers, and other events highlighting the practice of using networks of shell

For more details on any of the topics covered in this *Business Law Update*, please contact the authors via the links at the end of each article or David R. Valz, editor-in-chief. For information on our Corporate Transactions & Securities practice, please contact Frank D. Chaiken, practice group leader.

and holding companies in various countries to hide money laundering and other corrupt financial activities. The lack of rules requiring disclosure of the ultimate beneficial ownership of entities made such practices possible. The disclosures resulting from these and similar events, showed how, and by whom, such entities were being used. This in large part prompted a worldwide push to require disclosure of beneficial ownership of certain types of business entities.

This type of disclosure has been required for many years in some countries and regions. As a young lawyer working in Switzerland for a time, I found this to be a major difference in the corporate laws there, as compared to the system I learned in law school. The shareholders, directors and officers of business entities in most European countries all are disclosed in a public record maintained by a commercial court in the districts where companies are located. This has the effect of enabling one to find out with whom one is doing business.

By the way, this system also provided a solution to the “apparent authority” question we have under U.S. business law, i.e., knowing whether the individuals one is dealing with have the authority to enter into binding obligations on behalf of a company. If the name is not recorded in the commercial register, then the person cannot sign on the dotted line.

The commercial registry system has not existed up to now in the United States and many other countries. Entities could be formed by intermediaries, such as lawyers, as holding companies for other entities up and down the chain of ownership, without recording anywhere who actually is behind the operation.

In many instances, such anonymity may serve a benign purpose. For example, a real estate investor may wish to form separate entities to acquire blocks of property when assembling a parcel for development, without disclosing until the right moment who is doing the buying. Obviously, such anonymity also can be used to disguise less salutary intentions.

When the CTA takes effect on January 1, 2024, that anonymity will become a thing of the past. The Act takes a relatively measured approach. Disclosure requirements are targeted at the sorts of shell and holding companies that may be used for money laundering and other illegal activity. There are a host of exceptions, meant to exempt from the disclosure requirements companies that have substantial numbers of employees and business revenues, or whose ownership and operations are otherwise fully disclosed, such as banks and publicly traded companies.

Still, the requirements will pick up a very large number of entities formed for purposes of holding real estate and other legitimate business purposes. By some estimates, as many as 34 million entities in the United States will have to be registered. The disclosure requirements are detailed, with tight timeframes and the requirement to update information promptly after any change in the ownership or control structure of a registered entity.

Also note that some of the states, including major commercial centers such as New York and California, are getting into the action with state corporate transparency laws of their own. How these laws will dovetail with the CTA remains to be seen.

Readers should consult with your contacts at Thompson Hine, or other legal counsel, to determine whether you may have any reporting obligations under the CTA.

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Frank Chaiken leads the firm’s highly regarded Corporate Transactions & Securities practice, which comprises more than 100 professionals who represent clients of all sizes across virtually every industry. If you have questions or would like to share your thoughts, please contact Frank at 312.998.4249 or Frank.Chaiken@ThompsonHine.com.

Resources:

- FinCEN’s website: Beneficial Ownership Information Reporting
- *Business Law Update,* March 2023: “Corporate Transparency Act Requires Filing Reports with FinCEN in 2024”
- Thompson Hine’s ethics blog, *The Law for Lawyers Today:* “Corporate Transparency Act: Ethical Considerations for 2024”

ARTIFICIAL INTELLIGENCE

I, For One, Welcome AI: A Brief History of Artificial Intelligence & What's Next in Law Practice

By Will Henry and Kelsey Smith

In February 2011, "Jeopardy!" legends Ken Jennings and Brad Rutter appeared on a special edition of the show. Their challenge was to face a daunting, potentially unbeatable third opponent, an opponent that was highly intimidating despite having never appeared on the show—or slept, eaten or done anything else humans do for that matter. Their opponent was Watson, IBM's artificial intelligence system. And prove unbeatable Watson did, with the final result (post-Final Jeopardy!) being Jennings, $24,000; Rutter, $21,600; and Watson, $77,147. In Jennings' final answer, he wrote (paraphrasing a famous joke from "The Simpsons"), "I, for one, welcome our new robot overlords."

Watson's game show dominance manifested itself over 12 years ago. But a mere 12 months ago, on November 30, 2022, OpenAI's ChatGPT system—referred to as a "large language model" not simply capable of Watson's factual recitation, but also of being a virtual assistant with, well, virtually anything, from writing short essays, to coding, to extrapolating key ideas from lengthy texts—was unveiled to the public. Per Reuters, ChatGPT hit 100 million active users within an astonishingly fast two months. (For comparison, according to Visual Capitalist, it took seven years for the internet to reach 100 million users in the 1990s after its introduction.) Yet artificial intelligence is not a new concept, having first been introduced in 1951, when two scientists, Marvin Minsky and Dean Edmonds, developed what would be known as the first artificial neural network made up of 3,000 vacuum tubes that simulated our own brains' neurons.

While it took a bit to get from 1951 to Watson (60 years), it took just over a decade to get to ChatGPT. Google scientist, inventor and futurist Ray Kurzweil coined the term for the increase in the speed of growth as the Law of Accelerating Returns, basically, that technology begets better technology, and that better technology can create exponentially better technology. In a 2001 writing about his Law, he posited that as a result, "we won't experience 100 years of progress in the 21st century – it will be more like 20,000 years of progress (at today's rate)."

So, what does any of this primer, though in part fascinating and in part Watson-level intimidating, have to do with transactional practice, or law at large? It's simply that the tentacles of artificial intelligence will broaden and increasingly impact larger areas of the legal field, and faster than one might think. In the same breath that Watson—and other similar technologies over the last 10 years, like DeepMind's AlphaGo and IBM's Deep Blue (chess)—was what is referred to as "artificial specific intelligence," that is, artificial intelligence that's really good at answering trivia, or playing Go or chess, it can't do anything else. It can't reason, it can't pick up a cup, it can't negotiate purchase agreements.

Similarly, artificial specific intelligence (as the *Business Law Update* has noted in more detail in prior writings) has proven immensely beneficial in M&A transactions, especially those involving large amounts of diligence. AI programs like Kira, eBrevia and others are machine-learning software that identifies and analyzes contracts and documents, which saves attorneys and clients time and provides attorneys with accurate and distilled information. M&A attorneys can now have the software quickly review important contracts and datasets with a decreased fear of missing an important provision. The technology has proven essential for lawyers and clients by increasing efficiency and decreasing risk.

But AI's development won't stop at helping with diligence and document review—the next step is for AI to develop "artificial general intelligence," which is AI that, broadly speaking, is far more capable of helping lawyers conduct research, draft documents and negotiate what is "market." AGI is also more capable of learning trends, patterns and changes in the market. Further, it can help an M&A lawyer's clients as well. The use of AI-driven data analytic software can help professionals and companies make informed transaction decisions before even speaking with an attorney. As further explained by the Institute for Mergers, Acquisitions & Alliances, AI has the ability to identify potential acquisition targets, assess each target's alignment with strategic goals and evaluate potential risks during the transaction process, saving countless hours that were traditionally spent by clients on extensive research and analysis. Indeed, the IMAA stated that "AI algorithms provide insights into which targets are likely to align most effectively with the company's strategic goals…[minimizing] the risk of pursuing acquisitions that may not yield desire outcomes."

Kurzweil's optimism may well be merited in terms of the increasing speed with which AI will continue to improve and broaden its ability to assist lawyers and their clients in M&A transactions. We will continue to evaluate the effect AI might have on the legal profession—staffing of deals, cost efficiency and volume of transactions that are feasible—as well as potential ethical risks (as happened this past June, when lawyers unwisely relied on ChatGPT's responses that cited cases that did not exist). For now, we'll encourage M&A attorneys to monitor these changes on a regular basis, and as AI developments emerge, actively consider how this technology can be beneficial to them and their clients and further enhance their practice. AI is here to stay and not something for attorneys to steer clear of; instead, attorneys should embrace its many uses and learn to communicate those benefits to clients. Not only is the use of artificial intelligence cost saving to clients, but its ability to analyze risk, enhance data processing, and streamline the transaction process will prove beneficial to the attorneys and law firms that embrace and leverage the technology. Mr. Jennings's joking answer 12 years ago may well prove a lesson for practitioners and clients alike.

If you have any questions, please contact Will Henry or Kelsey Smith.

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- FTC Amends Safeguards Rule and Data Breach Notification Obligations
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NEW VENTURES

Pendulum Rockets Back in Favor of Investors with New SEC Fund Regulations
By Lindsay Karas Stencel and Jacob J. Denham

A longstanding characteristic of private venture fund regulations is their swing set-like nature. Each time new regulations or laws are enacted, the pendulum swings in the direction of either less regulation in favor of the general partners or increased regulation in favor of the investors. With the newly enacted regulations in favor of the limited partners, the swinging pendulum is certainly moving in their favor.

After a decade-plus of zero interest rate policy and corresponding elevated performance by private funds, the pendulum had swung too far with reduced regulation and general partners stretching just how much they could push their investors, and the Securities and Exchange Commission (SEC) has had enough. The SEC passed new private fund regulations on August 23, 2023 that went into effect on November 13, 2023. Given the sweeping nature of the rules, the SEC has granted venture funds an 18-month window to get their reporting and operational practices refined to increase the likelihood of proper compliance.

While these regulations do not eliminate venture funds in any capacity, they do change how venture capital funds must operate and dramatically increase the level of reporting and decrease the number of side deals that could previously be cut with investors, which may, in turn, prevent or limit new entrants from getting a seat at the proverbial table. Because the compliance and reporting requirements materially alter what funds must do to be compliant with the new rules, funds' costs for compliance professionals and legal counsel will naturally increase, as will the time spent on these matters (as opposed to time spent managing funds' portfolios). And for new venture funds who often do not have the resources to pay for additional outside assistance or the internal team bandwidth to cover some of the requirements set out in the new rules, the new regulations may end up having a chilling effect on the formation of new venture funds led by emerging managers.

Two of the most significant (and costly) rules among those made effective this November applicable to venture capital funds include (i) regulations surrounding fees and borrowings and (ii) the required disclosure of preferential treatment of different investors.

Restricted Activities

Fees

Previously, general partners (GPs) of funds could charge the funds for SEC investigations of the funds or the GPs themselves. However, with the new regulations, GPs are prohibited from charging for any investigation that results in regulators imposing sanctions. If an investigation does not result in sanctions, the GP must now acquire consent from a majority in interest of their limited partners (LPs) to charge for the fees, and the LPs could agree contractually in their limited partnership agreements to increase those approval thresholds. Additionally, where the GPs could previously charge for fees and expenses associated with regulatory or compliance matters (for the GP or related persons) or SEC examinations without disclosing such fees to LPs, the SEC now mandates that those fees and expenses be disclosed to the LPs within 45 days.

Borrowing

Prior to the new regulations, GPs could borrow from private fund clients without disclosing such arrangements to other LPs, which often created warped incentives for the GPs and the lending LP to ensure that the line of credit or other form of borrowing was placed ahead of the duties to the funds' LPs. However, the pendulum has again swung in favor of the LPs, with the new regulations now preventing GPs from borrowing money or other assets or receiving a loan or line of credit from private fund clients unless the GP discloses the related material terms to its LPs and receives majority-in-interest consent (or greater if so required by the fund's respective governing agreements).

While the rules mentioned above add some complexity to fee structures as well as expenses to the GP and fund management teams, the new rules also add another layer to the disclosure process. Gone, at least in this swing of the pendulum, are the days in which the GPs could do what they like without disclosing any related party arrangements or charging funds for fees and expenses of regulatory examinations.

Preferential Treatment Disclosures

Prior to the new regulations taking place, side letters were issued seemingly left and right to investors, with carve-outs in every possible direction to limit disclosure of the contents of such letters to LPs and prospective investors. Often, lead or large investors were receiving discounted fees, preferential reporting treatment, or special access to co-investment opportunities over other LPs, but not anymore. Under the new regulations, funds must disclose any material economic terms of a current side letter to *prospective* LPs as well as any side letter with preferential treatment to all *current* LPs on an annual basis.

Impacts Rolling Forward

The impacts of these regulations remain to be seen, but the frequency with which emerging managers are forced to grant special unit economics to investors to secure their investment occurs far more frequently than seen in larger, more established funds. This may have a chilling effect on the ability of new fund managers to secure larger investors for their earliest funds, or may result in all those managers providing all investors with those preferred economic terms, which will only serve to exacerbate the potential issues smaller funds have in maintaining sufficient resources to manage their portfolios.

What's arguably more significant is that the SEC estimated the average compliance costs under the new rules will be as follows:

- Preferential Treatment Rule = $4,288 per year per fund
- Restricted Activities Rule = $6,846 per year per fund
- Total for venture funds: $11,134 per year (per fund)

Note that the above costs do not factor in the potential fees related to an investigation that the GP cannot charge without the LPs' consent.

While these costs may seem low to venture capital funds that already have a seat on the private fund swing set, the burdens may weigh more heavily on emerging or smaller funds. One must wonder then, if these regulations and added costs, which are meant to protect investors, all of whom are accredited or qualified purchasers with ample knowledge of how to protect their interests, will reduce the number of new funds and further push the venture capital market toward larger, more established funds in the name of investor protection.

The pendulum has certainly swung, but has it already swung too far?

Please contact Lindsay Karas Stencel or Jacob Denham with any questions.

BUSINESS LITIGATION

The Right of Publicity

By Jesse L. Jenike-Godshalk

You are probably already aware of the risks of inaccurately portraying real people in online and print publications, such as advertisements, websites, and newsletters. You could be sued for defamation. So, you may think: As long as my company portrays any real people accurately, we are safe; we will not be liable. After all, truth is an absolute defense to defamation.

Unfortunately, potential liability is not limited to claims for defamation. You should also be aware of claims for violation of the "right of publicity." While the right of publicity varies from state to state, in general it protects an individual's name, likeness, image, voice, and other identifying features, and it is violated when someone uses an individual's identifying features for commercial purposes without the individual's permission. The right of publicity would likely come into play, for instance, if you created a movie or a book based on a real person without first obtaining that person's permission. In some states, the right of publicity can even extend after a person's death.

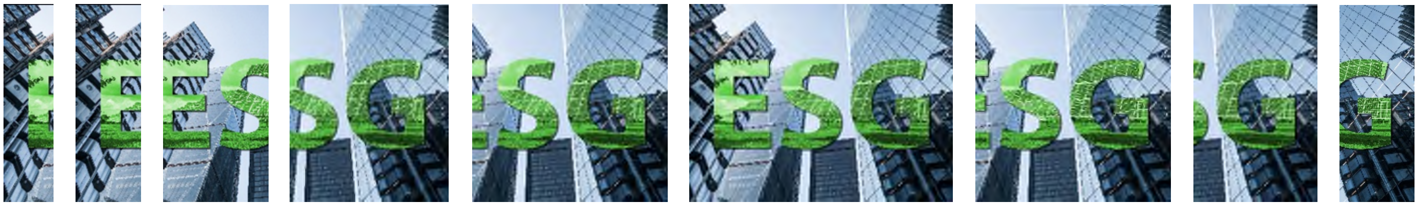
You obviously need to be aware of the right of publicity if you are a content creator, such as a writer, artist, or influencer, or if you are a media company. But the right of publicity can also be relevant to any company or nonprofit. For example, it could come up if you took someone's photograph from a gala or fundraising event and, without the person's permission, used the photograph on your company website or in a company newsletter. It could also arise if you were to make a television commercial in which you briefly interviewed people on the street about your product, but you did not obtain their permission to use the interview in a commercial. As a third example, the right of publicity would be implicated if you used a person's photograph and/or name in connection with an online or print product review.

While defamation focuses on protecting a person's reputation, the right of publicity focuses instead on an individual's right to exploit and monetize their own identity. As a result, while you can avoid a defamation lawsuit by accurately portraying real people, this does not protect you from a suit for violation of the right of publicity. In fact, the more accurately you portray a person by, for instance, using the person's real name, photograph, and voice, the stronger that person's case for violation of the right of publicity.

So, what can you do to avoid potential liability for violation of this right? One option is to obtain permission from individuals before using their names, photographs, and other identifying features. Another option is to anonymize. For instance, when printing a customer review, do not use the individual's photograph and real name. Instead, identify the individual only as "Customer #1."

This article is intended to serve only as an introduction to the right of publicity. Because the right varies from state to state, it is best to consult an attorney if you have questions about the finer points of this topic. And it may not be enough to evaluate only the law of your home state, because you could be sued under the laws of another state where the plaintiff lives. But at least now, you have a general awareness of the risks of using an individual's identifying features without their permission.

Please contact Jesse Jenike-Godshalk with any questions.



ENVIRONMENTAL, SOCIAL & GOVERNANCE

Don’t Count ESG Out: Alive and Well in 2024

By Heidi B. Friedman

With all of the anti-ESG legislation being enacted and the increase in greenwashing, diversity, environmental justice and shareholder litigation, companies have been asking whether ESG is still a driving force for business. The answer is a resounding YES!

Data collected as recently as October 2023 confirms that ESG is not going anywhere. While some companies are softly retreating to terminology like “corporate responsibility” or “sustainability,” the substance that makes up the components of their ESG programs and goals is sticking because stakeholders demand it. Three-fourths of Americans believe companies need to positively impact society, and the large U.S. corporations that best meet stakeholder needs saw a 4.5% higher profit margin and a 2.3% higher return on equity and they paid five times more in dividends. (“Why Companies Should Prioritize ESG and Tips for Success,” forbes.com, October 4, 2023). At the same time, 70% of potential employees are more likely to apply for and accept a job from a socially responsible organization, and 92% of U.S. investors believe a company with a strong ESG performance deserves a premium valuation of its share price. *Id.* And look how far the world has come without any regulation.

Yet as we enter this new era and move away from solely voluntary disclosures, it will be more important than ever for companies to continue to develop authentic ESG programs that align with company values and stakeholder input and to keep these programs fluid and flexible.

Here are 10 ESG-related items to evaluate (and watch) in 2024:

1. **The Securities and Exchange Commission’s (SEC) rule for climate-related disclosures**. While no one has a crystal ball, the vast majority of ESG professionals believe that the SEC will work its way through the almost 16,000 comments it received and issue the long-awaited final rule for climate-related disclosures. While it is likely that the final rule will be challenged, its approach to Scope 3 emissions (greenhouse gas emissions up and down a company’s value chain) will impact public companies that have to directly report to the SEC as well as many private companies through the “flow down” impact public companies impose on their suppliers. Hopefully, the public companies are ready and have set up a process that will support making their climate-related financial reporting as reliable as their historic financial reporting.
2. **The California Air Resources Board’s (CARB) regulations interpreting California’s new climate laws (CA B 253, 261 and AB 1305).** California wins the prize for being first out of the gate with new ESG laws regulating companies that do business in the state. Yet CARB is now tasked with telling the world what these vague and difficult-to-interpret laws mean; CARB has until January 1, 2025, to complete this mission. The new laws will require Scope 3 disclosures by 2027, and California’s requirements are generally broader than the proposed SEC rule, applying to both private and public companies that do business in California and generate over $1 billion in gross annual revenue. There is also a new very broad law imposing mandates on carbon offsets and net-zero disclosures, although it will be a while before the regulated community truly understands the full meaning of these new requirements and how they will interact with the other regulations arising on the federal level. While companies are eager to

prepare, it will be interesting to see if CARB provides any previews next year.

3. **The Federal Trade Commission's (FTC) Green Guides**. As with the SEC rule, every company that makes any type of environmental claim wants to know when the FTC will issue its new Green Guides, the premier resources aimed at preventing deceptive claims about the environmental benefits of products or services. The FTC was supposed to provide an update back in 2022, but we are still living with the 2012 version. While the comment period for the Green Guides update ended in April 2023, many experts are not optimistic that the FTC will even issue the long-awaited update in 2024 due to the number of comments it received and the breadth of changes that will be required. It will be important to monitor if 2024 is the FTC's year, as the update will be the instruction manual for how to make environmental marketing claims while mitigating the risk of greenwashing litigation. Businesses will also need to keep an eye out for increased FTC enforcement, which is expected to quickly follow the release of the update.
4. **Has your materiality assessment gotten stale?** Many companies go through the strategic process of launching their ESG programs from the ground up with a materiality assessment (although the better term is a prioritization assessment). This best practice tool allows an organization to gather information from stakeholders to identify which issues under the ESG umbrella are most important to employees, suppliers, customers and investors. Yet stakeholder values change over time, so ESG programs need to stay nimble and fluid. Thus, a pre-COVID materiality assessment may not serve a company well in 2024 and beyond. Indeed, it may be time to initiate a reboot or consider breaking the assessment down by business units or locations to get greater clarity around what really matters and where the company's goals should be focused and dollars should be spent.
5. **What Corporate Sustainability Reporting Directive (CSRD) disclosures will actually look like.** While U.S. companies doing business in the EU have received a two-year reprieve, EU-based companies will be faced with CSRD next year. As of January 1, 2024, European companies complying with the Non-Financial Reporting Directive will be required to report on climate impact as well as various social topics (which is broader than the SEC rule). Other types of companies will be phased in from there. CSRD is intense and requires disclosure of double materiality (i.e., impact to the business and the climate) and auditing of data, which makes the mandates a whole new ballgame for most businesses. The goal is to improve the quality and reliability of this type of data for investors, but it will be interesting to see the practical effect. Thus, it is time to apply the company's best practices for disclosure of historical financial information to GHG emissions and other related environment impact statements that are provided as part of the CSRD directive.
6. **Task Force on Climate-Related Financial Disclosures (TCFD) requirements.** TCFD seems to be the chosen standard/framework to comply with both the upcoming SEC and CSRD mandates, but TCFD published its final report in October of this year, which confirmed the momentum of companies disclosing TCFD-aligned information. As the task force is disbanded, the International Sustainability Standards Board will take over monitoring climate-related disclosures and reporting to the Financial Stability Board, but – at least at this point in time – TCFD will live on as the most accepted "gold standard" reporting framework.
7. **Whether courts will back companies as greenwashing and diversity-related claims rise.** Right now, many courts are facing pending motions to dismiss from companies trying to defeat consumer class actions and other fraudulent misrepresentation claims that fall into every growing bucket of greenwashing claims. While plaintiffs are pushing the envelope on these claims, companies are pushing back, and courts have been fairly aggressive in dismissing claims. (See, e.g., *David Swartz v. The Coca-Cola Company,* N. Dist. CA, Nov. 18, 2022; *Lizama, et al. v. H&M,* E.D Missouri, June 2, 2023). Yet there are too many claims pending to count, and after the Supreme Court's decision on affirmative action (*SFFS v. President & Fellows of Harvard College, et al.*, June 29, 2023), various groups also are aggressively going after diversity, equity, inclusion and belonging programs as well as filing reverse discrimination claims. (See, e.g., *Brian Craig v. Target,* M.D. Florida, Aug. 8, 2023). While the Supreme Court's opinion in the *Harvard* case is pretty narrow, it looks like the lack of regulation around these issues has created a gap that may be filled with court precedent next year, which may require some companies to revisit and revise aspects of their ESG programs.
8. **Decreased interest in carbon offsets and increased litigation related to carbon offset contracts.** There is a clear trend indicating that key ESG stakeholders will not accept carbon offsets in place of addressing root cause problems for GHG emissions; thus, this alleged "pay to play" replacement will be looked at very closely in the coming year. Most recently, a California federal

court threw out a lawsuit (with leave to amend) against an arts and crafts company related to carbon offset claims it made associated with shipping its products. The risk to companies purchasing these offsets is heightened by the challenges inherent in the contracts and a company's ability to collect damages should the offset provider not be able to deliver. Liquidated damages will most definitely not cut it when a company may face litigation and enforcement from an offset agreement gone bad. Injunctive relief may be helpful, but only if there is an action that can be enforced, and oftentimes the offset just does not exist. This will remain a risky proposition in the coming years.

9. **An uptick in the "flow down" impact.** Scope 3 emissions are the heart of every company's emissions. According to the UN Global Compact, a non-binding United Nations pact to get businesses to adopt sustainable and socially responsible policies and report on them (July 26, 2000), Scope 3 emissions make up at least 70% of a company's emissions. Some companies even report that Scope 3 emissions make up 95% of total emissions. ("Tackling the scope 3 challenge," PWC Global in collaboration with The Climate Group, October 28, 2022). The pending regulatory framework will require a deeper dive into a company's full supply chain, both upstream and downstream, to even begin to tackle Scope 3. Thus, there will be additional mandates to meet the Science Based Targets Initiative, a rigorous and expensive process that validates GHG emission calculations and data and allows a company that successfully completes the process to rely on the certification. The days of customer surveys and forms and requests related to ESG are just beginning. Creating a single streamlined response framework and workflow will be critical.
10. **A way to track data comprehensively**. The number one challenge businesses faced in 2022, according to a Thompson Hine ESG Collaborative survey, is tracking data. ESG professionals' email boxes are full of messages from companies trying to sell a one-size-fits-all solution; yet as of now, there is not a single product that can synthesize and amalgamate all of the data needed to substantiate a company's full set of goals and metrics under the ESG umbrella. Between the use of AI and the development of more specific and streamlined reporting frameworks, it is highly likely that various solutions will emerge. In the interim, it remains critical to continue collecting data to back **every** claim or statement that is made, to update it frequently and, ideally, to regularly audit the data. This is the best risk mitigation strategy available for now.

There are many significant developments on the ESG horizon as we shift into a new area of requirements and mandates. Be sure to make a New Year's resolution that includes tracking this ever-changing landscape. The seismic shifts that are expected in 2024 will impact all businesses, public and private. Put the resources in place now to allow your business to be agile and proactive in meeting stakeholder expectations for ESG and everything that falls under that ever-growing umbrella.

Please contact Heidi Friedman with any questions.